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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,796	03/07/2002	Jonathan D. Smith	RBC-101US	3409

24314 7590 11/21/2002

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/092,796

Applicant(s)

SMITH, JONATHAN D.

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 53 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 53 is dependent upon a non-existent claim 52.
4. Examiner notes this to be a typographical error and has treated claims 53 and 54 on the merits. When the application is allowed these claims will be renumbered, respectively.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 11, 18, 39, 45 – 50 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Applicant's admitted Prior Art, namely, Stang, Elden J. and Birrenkott, Brian A., "Plant Growth Regulators Alter Fruit Set and Yield in Cranberry (*Vaccinium Macrocarpon* Ait.)", Acta Horticulturae 241, 1989, pp 277-283, hereinafter referred to as Stang et al.
7. Stang et al. disclose: applying to cranberry plants a plant growth regulating compound such that the cranberries have a mature mass of less than about 0.75 grams/cranberry; the applying step being during the mid-bloom period; there being a single applying step; the

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composition being applied when about 50-100% of flowers have opened (bloom percentages); the active ingredient includes gibberellin; a solution including the composition is applied to the plants; the solution being an aqueous solution; the composition being GA<sub>3</sub>; the concentration of composition within the solution is 25-100 ppm; and the application being by spraying.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12 – 17, 19 – 38, 40 – 44 and 51 – 53 are rejected under 35 U.S.C. 103(a) as obvious over Stang et al. as applied to claims 1 – 11, 18, 39, 45 – 50 and 54 above.

10. Regarding claims 12 – 18, 20 – 37, 40 – 44, 51 and 53, Stang et al. inherently demonstrate that while the relationship between GA<sub>3</sub> ppm and Fruit Set (%), and GA<sub>3</sub> ppm and Fruit Weight (g) are (obviously?) not linear, it would be obvious to one of ordinary skill in the art, upon examination of Table 3, to discern the trend that increasing GA<sub>3</sub> ppm would tend to increase Fruit Set (%) and decrease Fruit Weight (g). Stang et al. disclose the claimed invention except for the ranges specified in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to discern the trends, and further to experiment, in order to find the specific ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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11. Regarding claim 19 and 38, Stang et al. do not explicitly state the application being by ground-driven application equipment. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use ground-driven application equipment, since the equivalence of ground-driven application equipment and hand-carried application equipment, for example, for their use in the agricultural application art and the selection of any known equivalents to any spraying-type applicator equipment would be within the level of ordinary skill in the art.

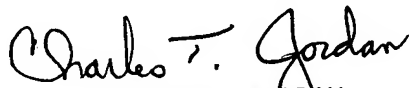
*Conclusion*

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306-0553. The examiner can normally be reached Monday through Friday from 7:00 am to 4:30 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306-4159. The fax number for this group is (703) 305-7687.

bh

11/18/02

  
CHARLES T. JORDAN  
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